

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
UNITED STATES OF AMERICA,	: 12-cr-00134-ERK-MDG
	:
- versus -	: U.S. Courthouse
	: Brooklyn, New York
ADNAN IBRAHIM HARUN A HAUSA,	:
also known as "Spin Ghul",	:
also known as "Esbin Gol",	:
also known as "Isbungoul",	:
also known as "Abu Tamim",	:
also known as "Joseph Johnson",	: September 4, 2013
also known as	:
"Mortala Mohamed Adam",	:
Defendant	:
-----X	

TRANSCRIPT OF CRIMINAL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 THE CLERK: United States v. Adnan Hausa.

2 Your appearances, counsel.

3 MR. ARIAIL: Good morning, your Honor.

4 Shreve Ariail and Amanda Hector for the United
5 States.

6 MR. STERN: Good morning. David Stern for
7 Mr. Hausa.

8 THE COURT: All right.

9 THE CLERK: The interpreter previously sworn is
10 still under oath. Please state your name for the record.

11 THE INTERPRETER: My name is Mohammed Azziz
12 Shuaib.

13 (INTERPRETER PREVIOUSLY SWORN)

14 THE COURT: We're on for status, Judge.

15 MR. ARIAIL: Your Honor, at the last status
16 conference, we had advised the Court that we would have
17 discussions with our counterparts in Washington and also
18 with defense counsel about setting a scheduling order for
19 a motion related to the classified issues in the case.
20 We submitted a letter this morning and a proposed order
21 on the schedule but I believe defense counsel may have
22 some issues with that.

23 MR. STERN: The issue is not in particular with
24 the schedule but with the idea that I should make
25 decisions for Mr. Hausa when it's yet to be resolved

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1 whether or not he is going to act as his own lawyer. He
2 and I have had conversations. He has told me what he
3 wishes to do or hopes to do. And those things may not be
4 precisely what I would do were I his lawyer but if he has
5 a right to act as his own lawyer, and that right is
6 obviously separate from his competence to be tried, that
7 seems to me needs to be decided before I make any
8 decisions on his behalf that he might later claim were
9 decisions he would not have elected to make.

10 So I think any decisions on how he should be
11 defended, what should be done, what should be
12 investigated, et cetera, have to be held in abeyance
13 until there's a decision about whether or not he is going
14 to act as his own counsel.

15 THE COURT: Yes, Mr. Hausa?

16 THE DEFENDANT: Your Honor, I want to defend
17 myself. I want to be thrown to the highest supreme court
18 (indiscernible).

19 THE COURT: I can't hear you. The highest
20 supreme court of what?

21 THE INTERPRETER: -- of Washington.

22 THE DEFENDANT: The issue, my issue before it
23 came to killing the American soldiers in Afghanistan --

24 MR. STERN: Judge, can I just interrupt him for
25 one second? I'm sorry.

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1 You know, it's my advice to him if I am still
2 his lawyer that he not be saying these kinds of things,
3 that he assert his Fifth Amendment right to remain
4 silent. Just sit here --

5 THE COURT: I'm not going to let the government
6 use anything he says --

7 MR. STERN: Okay.

8 THE COURT: -- until we get this resolved.

9 THE DEFENDANT: Just like what we did like
10 killing the American soldiers in Afghanistan. I stated
11 that before even going to Afghanistan for killing the
12 Americans and have now a --

13 THE COURT: Mr. Hausa, if you want to be your
14 own lawyer, I have to go through an allocution. I have
15 to ask you questions and answers to be sure that you
16 fully understand what you're doing and in my view, the
17 mistake that you're making by -- to be sure that you know
18 what you're doing. I mean what is the sentence that he
19 faces?

20 MR. ARIAIL: Your Honor?

21 THE COURT: What is the sentence, the maximum
22 sentence?

23 MR. ARIAIL: Life imprisonment, your Honor.

24 THE COURT: So you face life imprisonment here.
25 And you'll probably wind up in some -- in Colorado where

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1 they keep the most dangerous criminals inside a mountain
2 and never see anyone. So in a sense, it's like deciding
3 to go through major surgery in which you could lose your
4 life and you decide to be your own surgeon. Now that
5 doesn't make sense.

6 But if you want to do it, under the
7 Constitution of the United States, you have the right to
8 do that. But I have to go through an allocution with you
9 to be sure that you know what you're doing.

10 MR. ARIAIL: Your Honor, if I may too add just
11 in terms of competency, obviously we talked about
12 competency at the last status conference and as we have
13 indicated, the doctor had found him competent to stand
14 trial. There's a case that's a Supreme Court case,
15 Indiana v. Edwards, and it is 554 U.S. 164 (2008), that
16 suggests that there may be additional considerations that
17 the Court should consider with respect to mental
18 competency to -- for a defendant to proceed pro se.

19 So I think before we get to the point of having
20 him go through the allocution, we would likely have to do
21 or at least get some kind of additional analysis from the
22 doctor who has examined him previously.

23 THE COURT: Do you have that case?

24 THE CLERK: Do you have the case with you?

25 MR. ARIAIL: I don't have the case with me,

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1 your Honor. I'm sorry.

2 MR. STERN: Judge, I have a copy here if you
3 want to see it.

4 THE COURT: Yes, I would like to see it.

5 MR. ARIAIL: Your Honor, I think I'll direct
6 you to page 176.

7 THE COURT: 176 of the U.S. report?

8 MR. ARIAIL: Yes, your Honor.

9 (Pause)

10 THE COURT: I have Dr. Mills' letter. Does he
11 say that he suffers from mental illness?

12 MS. HECTOR: Your Honor, I am not sure that I
13 can characterize whether Dr. Mills as an expert would
14 call what I am about to say mental illness or personality
15 issues; I'm not sure what he would characterize it to be.

16 THE COURT: I don't know. I am reading the
17 Supreme Court case which I happen to be one of those
18 judges that the Supreme Court refer to that think that
19 the right to the ineffective assistance of counsel, which
20 essentially Loretta enshrines is silly but that's the
21 law. But the case that you gave me talks about, at least
22 some degree of mental illness affecting his capacity to
23 represent himself.

24 MS. HECTOR: Yes, your Honor. I would -- in
25 the conclusions --

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1 THE COURT: I mean if you had this case, I
2 don't know why you didn't ask the doctor to be more
3 specific in his report.

4 MR. ARIAIL: Your Honor, I think that's what --
5 and you know I apologize that this was not perfected
6 before we came here to court today but I think that's
7 what we would propose doing is having the doctor to
8 consider those factors in Indiana v. Edwards and any
9 other factors that might be out there and at least opine
10 upon his ability to proceed pro se.

11 The other issues that has come up in the last
12 24 hours is we've also received additional information
13 from the BOP about his behavior at the BOP, that the BOP
14 medical people have concerns about. Now it's unclear
15 whether that behavior is the same stuff that Dr. Mills
16 considered or whether that's additional stuff. So we at
17 least need to have Dr. Mills consider that in addition to
18 presumably the factors in Indiana v. Edwards.

19 MR. STERN: Judge, I'm not sure -- or I guess
20 to be more forceful, I don't think that this can continue
21 being a joint venture between the government and the
22 defense because of at some point this defendant says, for
23 example, on an appeal, I really wasn't fit. There has to
24 be some kind of adversarial proceeding, I think. Again,
25 I'm speaking for him when he wants to speak for himself.

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1 We're in this odd limbo where we're kind of deciding if
2 he can speak for himself as a lawyer or as a defendant
3 representing himself in court.

4 But, you know, having looked at some of these
5 cases that the government was kind enough to tell me
6 about, it seems to me that his mental health is an issue
7 and having spoken to him, I think there are at least
8 potential mental health issues, some of which he
9 acknowledges and some of which he doesn't.

10 So I think we're going to take another step of
11 mental health examination. Each party should have their
12 own expert. He should be examined by both parties. They
13 may reach agreement and they may not. I don't know mean
14 to predict how that will come out.

15 THE COURT: Well whose expert was Dr. Mills? I
16 didn't get the impression --

17 MR. STERN: He was a joint expert.

18 THE COURT: Yes.

19 MR. STERN: Both parties agreed that he would
20 do the part that he's done. I'm not trying to undo that
21 but I am saying that of there's going to be further
22 psychiatric examinations with other potential goals in
23 mind, then I think each party should have their own
24 expert. And I don't mean that disqualifies Dr. Mills
25 from doing it for the government but we may want our own

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1 expert or at least want to see what he says and decide if
2 we want our own expert.

3 MR. ARIAIL: And, your Honor, this -- sorry,
4 this is the first I am learning of this, as well. So I
5 think we may --

6 MR. STERN: That's --

7 MR. ARIAIL: -- need to discuss that
8 (indiscernible).

9 MR. STERN: Yes, you know, Judge, a lot of this
10 I've only begun thinking about very recently. I was on
11 trial for a long time. I've now begun sort of to focus
12 on this case and as long as I'm talking about problems in
13 this case, if he is allowed to represent himself, there
14 would be issues, I think, with classified information.
15 He is not allowed to look at it. Someone would have to
16 look at it, make applications about the parts that --

17 THE COURT: Well first of all, whether he's
18 allowed to look at it or not, if he represents himself is
19 an interesting question which I don't --

20 MR. STERN: I don't know the answer either.

21 THE COURT: Neither do I.

22 MR. STERN: There would also be --

23 THE COURT: I don't take it as a given that it
24 could necessarily be withheld from him.

25 MR. STERN: Yes, I guess I don't know the

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1 answer to that.

2 THE COURT: It's an interesting question.

3 MR. STERN: There also will be investigations
4 that need to be done, some of them outside the country
5 and it's obvious that he can't do that. So, I don't say
6 that to urge you not to allow him to represent himself.
7 That's his choice ultimately.

8 THE COURT: I'm not interested -- I don't think
9 he should represent himself. It's not like I'm --

10 MR. STERN: I don't either.

11 THE COURT: -- interested in having him
12 represent himself but that's a separate question.

13 All right. You wanted to speak, Mr. Hausa --
14 Harun, I'm sorry -- Hausa.

15 THE DEFENDANT: The way I am thinking I went
16 away last time when I was here --

17 THE COURT: Could you talk -- move the
18 microphone next to you?

19 THE DEFENDANT: And last time when I came here,
20 if I could remember when the doctor came out of
21 Washington and examined me, and he said I'm sound, I'm
22 okay. And I want to speak about what you are talking
23 about.

24 In Lybia, under -- when I was arrested, the
25 truth is that through the politics, the kind of food I

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1 was given from the water, the kid of water I was given,
2 they were putting a lot of drugs inside, so that I
3 shouldn't be able to talk.

4 This happened during years and if you want to
5 listen from my explanations, what one of the policemen of
6 Lybia told me, they have the technology and it's afraid
7 and it goes through somebody's body. They use it to read
8 the mind of the person. I don't know the truth about
9 that. That's number one.

10 The secondly, the truth is I was in Lybia until
11 now that I am in this courtroom, and there are some
12 things about Lybia that came to flash in my head and
13 there are sometimes I over -- I heard something, they are
14 talks come to my ears. I don't know whether it was this
15 (indiscernible) subject, I do hear them -- they do talk
16 in Arabic and also MCC is the same.

17 Even at MCC psychology, those doctor, the
18 psychologist doctor, they came and sat with me, not once,
19 not twice. They do ask me about what I do here and
20 things of search and I told them that -- I think this
21 technology is CIA's technology. I don't know and I'm not
22 sure about that only that now.

23 In Italy, before the FBI took me for two weeks,
24 those who are working there at the City, Benevento City.
25 They do arrest me by false -- they took an injection and

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1 some word, they put me -- they put a shot in me. And
2 they didn't take my -- my consent. After they gave me
3 those injections, I can feel something in my head as if
4 it's balloon that is blown up and it's like a blowing on
5 the -- and it shrinks. And I am feeling that just a
6 compressor in my head is shrinking.

7 And after two weeks, they did that, I was
8 brought here. All those things that I been hearing in
9 Lybia were disturbing me and after that shot, that
10 injection, and it gots to much on me. And I told FBI
11 this talk. I don't know if you heard about that or not.

12 And my head is okay. And if you ask me about
13 what I am saying, I know what I am saying. It's not that
14 I am crazy. I'm good. My head is okay.

15 What I want to explain, I know last time you
16 told me when I was here what you told me, either I
17 represent myself or I use the lawyer to represent me. I
18 -- what I want to tell you and I told them since -- in
19 Italy, the City Argigento and when they -- I was asked on
20 that, I told them. What's I want to say is that -- an
21 explanation and the truth has to be told in front of
22 everybody and everybody should hear it.

23 And you, you may not see it very well, saying
24 it better is important to me. In Afghanistan, it's so
25 many people have to hide and was a shame, so many people

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1 died. And again, September that 3,000 people died and
2 you continue since then, since September 11, killing,
3 killing till now. And every way in the world is like
4 that. This policing that is going on and it's just like
5 a secret one. I think it's not unnecessary. Even in
6 Lybia, they heard it from me before the old man died and
7 we do all this, whatever they said about killing of
8 Khadafi and so on, and only those and any -- all those
9 who are there in the Lybia, if old men are there, they
10 can tell you what's going on.

11 That's why I want to tell you my issue. That's
12 why I want you to send me to Washington. I said before,
13 I was sent to Afghanistan, killing Americans and the
14 issue is from Saudi Arabia, when I was in Saudi Arabia.

15 I have a relationship with Osama bin Laden's
16 friends. I told them my idea of what I can contribute on
17 Pentagon and they used the one -- that's they work with
18 it, so when -- to go to Pentagon. The truth that I am
19 guilty, that guilty -- the one of Afghanistan and also
20 I'm guilty of the one of so far Washington.

21 And I think they should take me to the high
22 court and I think if this is not the small issue, then I
23 want the big Supreme Court to look at it. And I spent
24 eleven months here in New York since I came from Italy.
25 And now I ask you did you speak to your counterpart is

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1 CIA in Lybia? It's not my job but I didn't get nay reply
2 out of that. And did you get some other information till
3 now? To me (indiscernible) was missing, since I was
4 arrested, since I was (indiscernible) -- since I was
5 arrested in Lybia for twelve years. And (indiscernible)
6 till now, it's -- oh, having it till now the year 2013,
7 nobody spoke to me. And this is a very long time with
8 the CIA since Lybia. They say that they are going to
9 open a case with those in Saudi Arabia.

10 And it's true, they did some investigation with
11 my family in Nigeria. Then they started asking them
12 about Nigeria. But with my issue, they asking them
13 questions. This is the work of CIA. And now it's FBI
14 here in America. And you as a judge, you don't know all
15 these and I don't know if this is important to you or if
16 it's of no importance. To me, and this is an issue, it's
17 a heavy issue to me if you can just put me to the high
18 court and say everything and everything should be
19 understood. Do -- those family that died in Pentagon or
20 also in the plane crash at Pentagon, they should know
21 what is going on. It's not an issue of the government.

22 What the sheriff was saying is not on that
23 issue, the issue that happens in Pentagon. I think this
24 issue of how he has to deal with those people, the people
25 who are working in Pentagon, the armed forces that are

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1 working in Pentagon and those who crashed in the aircraft
2 at Pentagon. If you want to -- if you want to forgive
3 them, you forgive them. If they don't want to forgive
4 them, that's -- they're on their own.

5 Some of them are not here. Nobody's here to
6 represent them. They are not running. Or they put
7 something on my head and I told you last time -- I told
8 you last time, I came to here, I say I'm continue doing
9 my jihad. And whatever is doing now -- anyway you see
10 it, I'm just working for the religion. I'm not fear --
11 I'm not fearful.

12 And all those people have -- I have elected
13 them; Osama bin Laden and those more in Taliban --
14 Mohammed Omar (ph.), the one of Taliban. I'm not scared
15 in this world. Anything that you need to do, they should
16 do it.

17 All those things that you're talking about, I
18 wrote a letter to Congemon (ph.) and all these things. I
19 had explained in that letter. Even if they take me to
20 the world court, when they were talking about the local
21 issue and the issue explained everything and everybody
22 should get his own judgment. And I'm not hiding
23 anything. I'm not ready to run anywhere. And I'm not
24 scared.

25 Everything should be -- should be cleared in

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1 front of everybody and everybody should know that I don't
2 want anything hidden. It is there hiding things and
3 about what they are doing and they want to use me as a
4 secret officer because those in Lybia, the CIA in Lybia,
5 they were offering me such -- you don't know that? You
6 know that the CIA, they're working there. They are doing
7 things even to Afghanistan but you are -- you're not
8 aware what's -- it's between what they told me -- the CIA
9 told me between me and them.

10 I don't want to be a secret agent and I'm not
11 ready to be and that's what -- that's it on the issue of
12 -- I want also the people of my country to know that --
13 to explain this. Whatever -- whatever is the judgment,
14 whatever they want to do then, it should be right in
15 front of the people of my country.

16 Which you -- you can do it through your
17 protocol and permission. You have -- you have this
18 diplomacy between the U.S. and the Niger. Those who were
19 arrested in Afghanistan were taken to Guantanamo. They
20 didn't explain it to them in America. But that the
21 pentagon -- at the pentagon, they use the relationship
22 that they have and take them to Guantanamo.

23 To say the relationship between the America and
24 the -- those people that were arrested, they called their
25 governments to go -- to go and see their people in

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1 Guantanamo, the one that has nothing do with America was
2 freed.

3 But here in America, the government -- we are
4 now in America and Italy. It's not so the government of
5 America that arrested me. From Lybia, I was taken to
6 Italy and the one that told them to invite the American
7 government. You call this secret -- secret policing?
8 And this secret policing should stop. Since 2005, I was
9 in the prison. Why? This was (indiscernible) if they
10 kill me, they should kill me. If they want to do
11 anything, that is fine.

12 My -- my -- my head is just there and I'm not
13 feeling good -- I feel my head. I won't -- what's
14 happened and anything that happens to anybody's life,
15 they are secretive -- but anybody's life and this is
16 going to reach a limit.

17 I'm not -- I'm not so refusing anything and I'm
18 just talking through my conscience. That's what I wanted
19 to tell you. If you can -- you can -- you can look to
20 this issue, refer me to the big judge in Washington and
21 also under war, we go to the international courts and you
22 say you can't send me to the international court. I want
23 the biggest judges in America just to look into this
24 issue and I'm not American. I'm -- I'm not -- and you
25 are not the one that arrested me. They arrested me in

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1 Afghanistan. And because of the relationship that you
2 had with Italy, I was taken here and it's not like I was
3 -- I was whatever in Italy, it's not like I was there.
4 It took -- they took steps to bring me here. That's the
5 truth. And this is -- it's not your right.

6 THE COURT: Are you finished?

7 THE DEFENDANT: Yes.

8 THE COURT: First of all, I can't send you to
9 the Supreme Court. The Supreme Court here has seventy
10 cases a year and they only hear criminal cases after
11 someone is convicted. And the person can then appeal to
12 the Court of Appeals and then you can only go to the
13 Supreme Court if they want to listen to you. At this
14 stage of the proceedings, I can't send you to the Supreme
15 Court and I can't send you to some international court.

16 THE DEFENDANT: You can't send me to the
17 international court.

18 THE COURT: I can't. They'll send you right
19 back to me.

20 THE DEFENDANT: The meaning of sitting here?

21 THE COURT: They'll send you right back to me.
22 They'll send you right back to me. I explained to you
23 that --

24 THE DEFENDANT: They will bring me back --

25 THE COURT: They'll send you right back. I

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1 can't send you to an international court. The
2 international court it operates generally pursuant to the
3 Treaty of Rome and has a prosecutor and it prosecutes
4 people generally for violations of international law,
5 customary international law and there's a prosecutor who
6 decides who he wants to prosecute and who he doesn't want
7 to prosecute.

8 So you're in this court and the question is how
9 we're going to proceed in a way that's in your best
10 interest and there are complicated -- criminal trials are
11 complicated proceedings. They involve issues relating to
12 the admissibility of evidence, to whether you should take
13 the stand and speak in your own behalf or not. Your
14 lawyers have to review the evidence offered by the
15 government. Mr. Stern indicated for example, that he
16 might have to travel to Europe to find evidence that
17 could be helpful to you. None of this is anything that
18 you could do for yourself.

19 And it's exceptionally foolish of you to
20 attempt to do it yourself and it only redound to your --
21 it won't redound in any way to your benefit and as I told
22 you, you could wind up spending your life in some
23 unpleasant jail in the United States unless you cooperate
24 with your lawyers and unless you have a lawyer
25 representing you.

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1 And now that I read the Supreme Court case that
2 the government gave me, it's not so clear that you may
3 have an absolute right even if I go through the whole
4 allocution with you but you have to go through an
5 allocution with me. Otherwise, I can't -- an allocution
6 meaning I ask you questions and you answer my questions
7 in a normal, rational way and not in a rambling narrative
8 of the kind we've just went through.

9 THE DEFENDANT: If it's not the issue that you
10 take me back to -- I don't understand what you say.

11 THE COURT: I can't --

12 THE DEFENDANT: If that's issue, take me back
13 to Niger.

14 THE COURT: Well --

15 THE DEFENDANT: I will take me to my
16 (indiscernible).

17 THE COURT: I can't. I'm sorry. Could you
18 speak up in the microphone?

19 THE DEFENDANT: I say when (indiscernible)
20 this, take me to my -- to government my land near me. I
21 will sent to -- government from -- you seem to
22 government, my land, Niger. Come to here and understand
23 what you -- or send me -- me, myself, to my land, to
24 Niger. I cannot understand you.

25 THE COURT: I can't do that. You're charged

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1 with a crime. We have procedures here to be followed. I
2 can't send you anywhere other than to jail for the rest
3 of your life, if you're convicted. The question is
4 whether you want to try and help yourself by behaving in
5 a rational way and being represented by counsel or you
6 want to not do that, which will only hurt you.

7 THE DEFENDANT: What you have with taking the
8 international court under the --

9 THE COURT: I can't send you to an
10 international court and I can't send you to the Supreme
11 Court of the United States. This case has to be resolved
12 here and the question is what's the best way to resolve
13 it and what's in your best interest.

14 THE DEFENDANT: Here you in the United States,
15 you became now a United Nation. You became now the
16 United Nation and you want to judge everything. You --
17 that's the -- was the control between you and I. And I'm
18 -- okay, I'm just here alone or I'm your enemy and I'm
19 here to fight you.

20 THE COURT: Yes, but I'm not your enemy and I'm
21 not here to fight you. I'm here to see that you get a
22 fair trial and protect your constitutional rights.

23 THE DEFENDANT: No, I say on myself, I am
24 enemy. I fight you --

25 THE COURT: You make a --

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1 THE DEFENDANT: -- not to stay in America. And
2 to now, only one. The war in Afghanistan it is not
3 finished. And to now, me and Afghanistan.

4 THE COURT: Well, you could be -- you could --

5 THE DEFENDANT: Okay. How could -- how could
6 my -- my enemy -- how can the Court that is my enemy then
7 give me a good judgment?

8 THE COURT: Well because the Court is not your
9 enemy. I explained to you the first time you were here
10 that the judges in the United States are part of an
11 independent branch of government. I have life tenure.
12 The government can't cut my salary if they don't like
13 what I do. I think I told you when you were here the
14 first time that I had written an opinion that was very
15 critical of the President of the United States and the
16 only thing he said was that he was going to take an
17 appeal. So I'm here to protect your rights. I'm not
18 your enemy. I don't regard you as my enemy. And the
19 question is I want to -- I actually want to try to make
20 sure that you don't do any unnecessary damage to
21 yourself. If I were really your enemy, I would let you
22 do everything you want and you would wind up in a jail
23 that's buried in a mountain in Colorado for the rest of
24 your life. So I'm trying to help you avoid that. And
25 you are trying to do exactly what's against your best

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1 interests.

2 THE DEFENDANT: What is my best interest --
3 what is my best interest is when I was in prison, I wrote
4 to General Martin (ph.). I wrote him a letter about my
5 issues. And if he likes, he can take me to the military
6 courts and he'll can just invite all those soldiers of
7 Afghanistan and the ones of Pentagons because this issue
8 is the issue in this country in the United States.

9 They say in MCC that there's no response from
10 the general, only God knows. And I wrote a letter also
11 to the military court in Pentagon and they didn't answer
12 me. And you didn't see me at that time when I was
13 working. You don't know also the relationship I had with
14 those people in Saudi Arabia before I got --

15 THE COURT: No, you've got to -- look --

16 THE DEFENDANT: I so want to (indiscernible).
17 You don't have any reading --

18 THE COURT: Mr. Hausa? Mr. Hausa, I've let you
19 speak for a long time and I think we have to draw to a
20 close. Do you want to allow me to ask you questions
21 which you will answer that I can make a judgment that you
22 really want to waive your right to a lawyer or not?

23 THE DEFENDANT: If it's that the way you want
24 to proceed, I have to -- then to say either you send me
25 to Guantanamo. I know that is our have -- or you could

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1 send me to Colorado, do whatever you like. That's fine.
2 That's fine.

3 THE COURT: So you don't want to let me go
4 through a question and answer to be sure you know what
5 you're doing?

6 THE DEFENDANT: The truth is that it's whatever
7 is really is not that a judgment. It's just you playing
8 where the Courts on the -- there's nobody representing
9 the world here. There are no embassies here and we're in
10 your house and all of you are Americans. And you want to
11 judge me the way you want. You're right. And everybody
12 in this house knows best. I want to tell you one thing.

13 THE COURT: Just one more thing. Just one more
14 thing.

15 THE DEFENDANT: Islam Algiers, they put -- they
16 took some Americans on hostage and it's is not under the
17 judgment of the Algerians to kill them. Obama himself,
18 also he's talking about that issue. It's not good. If
19 it never went to -- I'm just like a hostage now in your
20 hands. You became now an Islamic American or whether --
21 all you became now an American group. You took me here
22 and then you want to judge me within yourselves. You
23 don't need to ask me any questions; just do what you like
24 and this is whatever -- because I am a Muslim and you are
25 Christians. And I'm your enemy and it's okay. Go ahead.

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1 Do what you want. God is there and you're not Allah. And
2 I'm telling you that even Jesus is here, he's not going
3 to accept what you are doing.

4 THE COURT: So you don't want to let me ask you
5 questions and answers, so that I can satisfy myself that
6 you know what you're doing?

7 THE DEFENDANT: I am sorry. And with me, I
8 have finished. So you don't have ask me any questions.

9 MR. STERN: Judge, could I have one minute to
10 talk to him?

11 (Counsel and client confer)

12 THE COURT: Mr. Stern, what do you want to do?
13 Now, I don't understand what you want to do here? He
14 doesn't want to --

15 THE DEFENDANT: I mean, for a hundred year --

16 THE COURT: I am not letting him waive his --
17 I'm not going to let him proceed without counsel because
18 he won't even cooperate in my asking him questions that
19 would allow me to make even a preliminary judgment.

20 THE DEFENDANT: I'm not going to answer you.
21 If you give me 400 years, it's okay by me.

22 THE COURT: I can't hear you.

23 THE DEFENDANT: If you give me life, life
24 sentence, just like Rachman (ph.), it's fine. I'm not
25 going to answer you any questions.

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1 THE COURT: Okay. Thank you.

2 Now, Mr. Stern, what do you want to do here?

3 THE DEFENDANT: He's not my lawyer. I
4 represent myself.

5 THE COURT: Well I told you, you can't
6 represent yourself unless you let me go through and ask
7 you questions and answers to make sure you understand
8 what you're doing. And that's only the beginning. If
9 you don't want to, then he's going to represent you.

10 THE DEFENDANT: I say do -- if that's a -- go
11 -- go and do what you want to. As from today, I seal my
12 mouth.

13 THE COURT: Okay. Thank you. You can -- you
14 don't have to stay.

15 THE DEFENDANT: Thank you. I don't have
16 anything to say.

17 (Defendant exits.)

18 THE COURT: All right. He doesn't have to be
19 here for discussions of legal issues and also, I can't
20 conduct proceedings with him in the courtroom because of
21 the way he's acting.

22 MR. STERN: Are you looking to me for
23 something?

24 THE COURT: Well, whatever. We started off --
25 you asked for --

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1 MR. ARIAIL: Yes, your Honor, actually we asked
2 for something too which was to have Dr. Mills consider
3 the Indiana v. Edwards factors. Obviously the allocution
4 did not go forward here but we would still request that
5 that be done.

6 THE COURT: All right.

7 MR. ARIAIL: And if defense counsel has
8 additional applications, obviously he can make them.

9 THE COURT: Well you could ask him, considering
10 -- I mean, I don't -- go ahead. Ask him to consider it.

11 MR. STERN: I think, Judge, that I have to give
12 this a little thought. I mean he is obviously not going
13 to cooperate with me in any way. He's not going to talk
14 to me about the case. He's not going to do anything that
15 allows me to prepare the case.

16 I don't know if that makes him incompetent or
17 willful. I'll have to look into that. But the idea of
18 doing this case where I think you've had some taste of
19 what it's like to try to talk to him about the case is a
20 little bit daunting. So I have to think about what
21 applications I want to make and how I would go about
22 doing it. I know the government has material to give me.
23 I'll obviously review the material they have.

24 They've proposed a schedule and as long as I'm
25 still his lawyer, that schedule is fine with me. I have

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1 no objection to the schedule.

2 THE COURT: Why aren't you still his lawyer?

3 MR. STERN: Well I am.

4 THE COURT: Unless you want to withdraw?

5 MR. STERN: No, I'm not -- I don't mean to
6 laugh but I'm not seeking to withdraw. I'm seeking to
7 figure out how to proceed really. So at least for the
8 time being, I'm going to consent to that schedule and
9 think about the things that I need to do to proceed with
10 this case. I'm really a little bit at sea. I've never
11 had exactly this situation before.

12 THE COURT: Well look, in most cases if you --
13 step back for a moment. Notwithstanding a lot of the
14 rhetoric and opinions about the defendant's ability to
15 cooperate with counsel, the truth is that the trial
16 proceeds with the government putting in its case and you
17 trying to tear it down and often there's very little that
18 a defendant could actually contribute to his own defense,
19 even if he tells you he's innocent.

20 MR. STERN: You're stuck.

21 THE COURT: I mean the reality is is that you
22 could probably -- you and Ms. Kellman are competent
23 enough to try and tear down the government's case and he
24 may or may not help you because I don't -- you know,
25 according to Dr. Mills, if he -- part of this -- his

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1 conduct, is volitional --

2 MR. STERN: Yes, I think what you may have --

3 THE COURT: -- and that they're -- and he might
4 decide at some point that he wants to cooperate
5 particularly if he's not going to let me ask him
6 questions to get a waiver of his rights, then as far as
7 I'm concerned, that's the end of the discussion.

8 MR. STERN: That's fine.

9 THE COURT: Unless, you know, unless -- I mean
10 I can't -- I think that he's not competent to represent
11 himself.

12 MR. STERN: Yes. All right. I mean I think
13 that the problem may be if he won't let us attack the
14 government's case, he seems to be quite intent on doing
15 something other than that but all I can tell you is I'll
16 try and figure it out. I'm going to try and meet with
17 him. I'm not sure he'll meet with me and see what I can
18 figure out.

19 I know I am not helping anybody much by saying
20 that but I don't have good answers to these things that
21 I've never encountered before. So I'll try and figure it
22 out. That's the best I can tell you. I would like, if
23 we can, to come back on the 25th. Hopefully I'll have
24 some answers for you by then and we'll see where we are.

25 THE CLERK: 2:30, counsel?

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1 (Pause)

2 THE CLERK: How's October 25th, counsel?

3 MS. HECTOR: That's fine.

4 THE CLERK: You want to do it at noon?

5 MR. STERN: That's fine.

6 MR. ARIAIL: That's fine for the government.

7 THE COURT: Well you could ask Dr. Mills to do
8 whatever it is you want him to do with this.

9 MR. ARIAIL: Certainly, your Honor. And then
10 ultimately, your Honor, obviously we have based on what
11 Dr. Mills has said already, you know, we're making an
12 application for the Court to find him competent and you
13 know, obviously we could wait until the rest of the
14 report comes in or you can consider that at this time but
15 I think a finding actually needs to be made by the Court
16 that is competent to stand trial before we could proceed.

17 THE COURT: But do you want to have any further
18 psychiatric evaluations?

19 MR. STERN: I think I have to talk with -- it
20 strikes me that some of the things he says are irrational
21 but some of the things he says are not. So I don't
22 really know enough to make that decision.

23 THE COURT: Okay.

24 MR. STERN: I read Dr. Mills' report. I know
25 what his opinion about it is.

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1 THE COURT: I don't -- well, I don't know that
2 he said anything rational today. I mean it's just a
3 rambling.

4 MR. STERN: So I think that will be one --

5 THE COURT: Totally irrational -- totally
6 irrational presentation.

7 MR. ARIAIL: Your Honor, I think you also --
8 you know, we do have to consider in terms of the context
9 of where he has been over the last, you know, twenty
10 years and his circumstances and his ideologies are very
11 complex and obviously not what we are used to dealing
12 with and I think that in that context, I think Dr. Mills
13 opined that he was essentially rational in his approach
14 to his proceedings.

15 So while we may not --

16 THE COURT: I don't know -- you could give him
17 the transcript and ask him if he thinks that this is
18 rational.

19 MR. ARIAIL: I will provide it to him, of
20 course, along with any other information that we've
21 uncovered.

22 THE COURT: I mean I don't -- I could send him
23 to a Butner for a psychiatric evaluation but he may come
24 back worse.

25 MR. ARIAIL: I can tell you also too, your

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1 Honor, you know that in terms of his interactions with
2 defense counsel and the government at times, that they're
3 perfectly rational. He's incredibly intelligent. He has
4 a memory that is phenomenal and much of the information
5 that he is providing to the Court to the Secretary
6 General of the United States, to defense counsel, to
7 everyone, and I'm not speaking about all of it but
8 significant aspects of it are accurate and corroborated.

9 In particular, obviously you know as we talked
10 about before, he was involved in a battle in Afghanistan
11 in which U.S. soldiers were actually killed. His
12 fingerprint was found on a Koran that was recovered at
13 that battle. So you know, just to point out that there
14 are some pieces to his story that are incredibly
15 corroborated and suggestive of someone who is actually
16 talking about things he knows about.

17 THE CLERK: Counsel, do you want --

18 THE COURT: And it's a policy of the
19 government, the department, to prosecute cases like this
20 in a normal criminal proceeding?

21 MR. ARIAIL: It is, your Honor.

22 THE COURT: When did that happen?

23 MR. ARIAIL: That's what we're here for, the
24 United States Attorney's Office represents the Department
25 of Justice.

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1 THE CLERK: We need an OED, Judge. You've
2 previously designated this case complex. There is the
3 defendant's pro se motion to proceed pro se and review of
4 materials for Dr. Mills --

5 MR. ARIAIL: That's correct.

6 THE COURT: -- from now until October 25th.

7 MR. STERN: And I consent to that. There's a
8 lot to be done here.

9 THE COURT: All right. I continue the complex
10 designation until October 25th. In the meantime, I am
11 going to sign this order. Do I have to sign this or is
12 it just simply for my --

13 MR. ARIAIL: I think it has a spot for your
14 signature, your Honor. So we can --

15 THE CLERK: I can sign it online, Judge.

16 MR. ARIAIL: -- work without it --

17 THE COURT: I'll sign it now.

18 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 1st day of October, 2013.


Linda Ferrara

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